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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

IN RE STEC, INC. SECURITIES
LITIGATION

This Document Relates to
ALL ACTIONS.

No. SACV 09-01304-JVS (MLGx)

**JOINT STIPULATION OF
DISCOVERY DISPUTE IN
CONNECTION WITH LEAD
PLAINTIFF'S MOTION TO
COMPEL PRODUCTION OF
DOCUMENTS**

Date: February 14, 2012
Time: 10:00 a.m.
Judge: Magistrate Judge
Marc L. Goldman
Courtroom: 10C

Discovery Cutoff: April 10, 2012
Pretrial Conf.: July 9, 2012
Trial Date: July 24, 2012

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LEAD PLAINTIFF'S INTRODUCTION

Pursuant to Fed. R. Civ. P. 37 and L.R. 37, Lead Plaintiff moves to compel production of certain documents requested by "Lead Plaintiff's Second Request for Production of Documents By Defendant STEC, Inc" (the "Second Request").

By Order dated June 17, 2011 (the "Order"), Judge Selna denied Defendants' motion to dismiss the "Second Consolidated Amended Complaint (the "Complaint"), as to all of Lead Plaintiff's exchange act claims. *See* Declaration of Richard T. Joffe in Connection with Joint Stipulation ("Joffe Declaration"), Ex. A, at 23 (holding "Plaintiffs' Exchange Act claims are not dismissed").¹

The Complaint alleges that, shortly after the close of STEC's 2009 second quarter, Defendants misled investors and thereby inflated the price of STEC's stock by, among other things, (1) announcing an unusually large contract with STEC's biggest customer, EMC (the "EMC Agreement"), while concealing its "one off" nature, (2) stating erroneously that sales of STEC's signature product, the ZeusIOPS, to STEC's other substantial customers (the "Other OEMs") were "expected" to increase during the second half of 2009, and (3) reporting inflated second quarter revenue. Ex. A, at 3.

As further alleged, only days later, on August 11, Defendants Manouch and Mark Moshayedi, STEC's CEO and COO/President, sold 50% of their STEC stock in a secondary offering, for \$267.8 million (the "Offering"). *Id.*

On February 23, 2010, in its 2010 10-K, STEC disclosed that certain of its employees, including the two Moshayedis, had been subpoenaed in a formal SEC investigation of trading in STEC stock. *See* Ex. B. On November 8, 2011, Defendants further disclosed that STEC had "received a 'Wells Notice' from the SEC, stating that the Staff . . . is considering recommending that the SEC initiate a civil injunctive action against the Company, its CEO and President, charging them

¹ All of Lead Plaintiff's exhibits herein are exhibits to the Joffe Declaration.

1 with violations of the antifraud and reporting provisions of the federal securities
2 laws.” Ex. C.

3 At a status conference on October 11, 2011, Judge Selna set case
4 management dates—including April 10, 2012, as the cut-off date for discovery.
5 *See* Ex. D.² On October 13, 2011, Lead Plaintiff served its “First Request for
6 Production of Documents by Defendant STEC, Inc.” (the “First Request”) Ex. F.

7 Because it appeared likely that the subject of the SEC investigation
8 overlapped with the subject of this lawsuit, and because it would be easy for
9 Defendants to produce a copy of what they already had given to the SEC, Lead
10 Plaintiff’s First Request asked only for all documents produced to, or received
11 from, the SEC, and all transcripts of any deposition or interview of STEC or any of
12 its employees by the SEC. Ex. F.

13 As it turns out, a substantial number of the documents produced by
14 Defendants to the SEC, and, subsequently, in response to Lead Plaintiff’s First
15 Request, are irrelevant to this case, because, as is evident from the SEC’s
16 subpoenas to, and depositions of, Defendants, a large part of the SEC’s
17 investigation concerns whether Defendants tipped relatives, friends or other STEC
18 employees prior to Defendants publicly announcing various news items regarding
19 STEC’s business—an issue not part of this case, and one involving, to some extent,
20 individuals not relevant to this case. *See*, Ex. G (excerpts from SEC’s subpoenas
21 to Defendants); Ex. H (excerpts from SEC’s depositions of Defendants).

22 Moreover, although part of the SEC investigation does appear to concern
23 whether Defendants adequately disclosed the nature of the EMC Agreement, the
24 investigation does not appear to concern any of the other claims in the Complaint,
25

26 ² The October 11, 2011, case management schedule replaced a prior case
27 management schedule issued on April 19, 2010, *see* Ex. E, at a time when this case
28 had a different lead plaintiff and no complaint had yet been upheld by the Court.

1 including Defendants' allegedly misleading statements regarding expected sales to
2 the Other OEMs, or STEC's allegedly inflated 2009 second quarter revenue.

3 Because the shortness of the discovery period requires Lead Plaintiff to act
4 promptly, and because Lead Plaintiff correctly anticipated that Defendants'
5 production to the SEC would not, without more, provide adequate documentation
6 regarding all of Lead Plaintiff's claims, on October 20, 2011, Lead Plaintiff served
7 its Second Request, asking, in fifty individualized requests, for documents relevant
8 to all of Lead Plaintiff's claims, to the extent that such documents had not been
9 produced in response to Lead Plaintiff's First Request. *See* Ex. I.

10 On November 28, 2011, STEC served its "Responses and Objections to
11 Lead Plaintiff's Second Request for Production of Documents" (STEC's
12 "Objections"). Ex. J. Regarding **ten** of the requests, STEC raised various boiler
13 plate objections and made no offer to produce any documents. Regarding another
14 **fifteen** requests, STEC asserted that some responsive documents had been
15 produced in response to the First Request, and, without denying the existence of
16 other responsive documents, objected to producing them. Finally, regarding
17 another **seventeen** requests, STEC did not produce any documents, but said it
18 would do so at "a mutually agreeable time"—which it did not identify.

19 On December 14, 2011, at Lead Plaintiff's request, *see* Ex. K, the parties
20 held a telephonic "meet and confer." Following that telephonic conference, STEC
21 produced a small number of documents,³ Lead Plaintiff sent STEC two successive
22 letters, *see* Exs. L & M, and STEC sent Lead Plaintiff a letter in response, *See* Ex.
23 N. Based on the foregoing exchanges between the parties, the issues discussed
24 herein cannot be resolved without the help of the Court.

25 _____
26 ³ Defendants produced more than 600,000 documents to the SEC (and in response
27 to the First Request herein, which asked only for documents produced to, or
28 received from, the SEC). By contrast, STEC has produced only approximately
164 documents in response to the Second Request. *See* Joffe Decl. at ¶ 24.

DEFENDANT'S INTRODUCTION⁴

Lead Plaintiff submits its Joint Stipulation of Discovery Dispute over STEC's objections. Lead Plaintiff has not exhausted the meet and confer process as required by Federal Rule of Civil Procedure 37(a) and Local Rule 37. Rather than respond to STEC's repeated offers to engage in continued meet and confer and to discuss these purported "disputes," Lead Plaintiff proclaims that further discussion would be fruitless and prematurely seeks intervention by this Court. Lead Plaintiff's refusal to participate in good faith meet and confer with STEC's counsel is inconsistent with the applicable rules and an abdication of Lead Counsel's professional obligations.

Despite Lead Plaintiff's refusal to meet and confer with STEC's counsel regarding resolution of these issues, on January 12, 2012, STEC's counsel sent a letter to Lead Counsel proposing specific resolution as to each of the disputed Requests. Lead Plaintiff responded by letter on January 16, 2012, stating that each of STEC's proposals is "unacceptable." Ex. BB. A complete description of the parties' meet and confer efforts and STEC's proposal for resolving the disputed requests is provided below.

Relevant Background of the Parties' Meet and Confer

STEC made an initial production of documents in response to Lead Plaintiff's First Set of Requests for Production on November 7, 2011, ten days before the deadline for STEC's response. Thereafter, STEC made four additional productions on November 18 & 29, December 19, 2011, and January 6, 2012, in response to Lead Plaintiff's First and Second Sets of Requests for Production. In

⁴ Lead Plaintiff's Joint Stipulation refers throughout to unspecified "Defendants." Yet Lead Plaintiff's Second Set of Requests for Production, dated October 20, 2011, is directed only to Defendant STEC, Inc. *See* Ex. I. Accordingly, the responses and contentions contained herein are made on behalf of Defendant STEC.

total, these productions included literally hundreds of thousands of documents consisting of approximately 1.6 million pages. The categories of documents STEC already has produced in response to Lead Plaintiff's First and Second Sets of Requests for Production, include the following:

- All non-privileged emails sent to and received by Manouch Moshayedi (CEO), Mark Moshayedi (President/COO), Anthony Anvari (VP of Sales), Raymond Cook (CFO), William Fahey (Director of Sales, Strategic Accounts), Mitch Gellman (VP of Investor Relations), and Luis Morales (VP of Corporate Development) during the period January 1, 2009 – May 31, 2010, without restriction as to subject matter restrictions;
- All non-privileged emails sent to and received by STEC employees Farzin Baz and Sammy Yau during January 1, 2009 – October 26, 2009, without any subject matter restrictions;
- All non-privileged emails sent to and received by STEC employee Eng-Teik Ong during January 1, 2009 – June 28, 2010, without any subject matter restrictions;
- All non-privileged emails regarding the August 2009 secondary offering identified by reviewing emails sent to and received by Manouch Moshayedi, Mark Moshayedi, Luis Morales, Raymond Cook, Mike Higa (Senior VP of Finance), Jalal Sadr (In-House Counsel), and Vikram Karnaker (Director, Corporate Development) during March 1, 2009 – August 31, 2009 containing certain search terms (i.e., "prospectus," "secondary offering," "sonic," "jpmorgan.com" AND "secondary," "db.com" AND "secondary," "wsgr.com" AND "secondary," "proxy");
- All non-privileged emails regarding the Form 10-Q for the second quarter of 2009 identified by reviewing emails sent to and received by Manouch Moshayedi, Raymond Cook, Mike Higa, Grace Lee (Director of Financial Reporting), Cathy Luu (Director of Planning and Forecasting), Luis Morales, Jalal Sadr, Mitch Gellman, and Debbie Friedman (VP of Worldwide Human Resources and Compensation) during April 1, 2009 – August 31, 2009 containing certain search terms (i.e., "second" AND "10-Q," "2nd" AND "10-Q," "second" AND "10Q," "2nd" AND "10Q," "second quarter," "2nd quarter," "Form 10Q," "Form 10-Q");
- Manouch and Mark Moshayedi's May 2009 10b5-1 trading plans and related documentation, including communication concerning these plans;
- STEC's 2009 press releases;
- All STEC Board meeting minutes for 2008 and 2009;
- All Forms 3, 4 and 5 filed with the Securities and Exchange Commission ("SEC") on behalf of Mark Moshayedi and Manouch

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Moshayedi relating to STEC securities during January 1, 2009 – November 24, 2009;

- Personnel and employment files for Manouch Moshayedi, Mark Moshayedi, Farzin Baz, Sammy Yau, Mike Moshayedi, Eng-Teik Ong, William Fahey, Anthony Anvari, and Luis Morales;
- Securities brokerage records and financial institution records for Mark Moshayedi, Manouch Moshayedi, Doug Finke (Director of Product Marketing), Mike Nilsson (VP of Sales), Eng-Tiek Ong, Anthony Anvari, William Fahey and Luis Morales during January 1, 2009 – May 31, 2010;
- Daily activity records for Manouch Moshayedi, Mark Moshayedi, Raymond Cook, and Mitch Gellman during January 1, 2009 – May 31, 2010;
- Telephone records for Manouch Moshayedi, Mark Moshayedi, Raymond Cook and Mitch Gellman during January 1, 2009 – May 31, 2010, and for Eng-Tiek Ong during January 1, 2009 – June 21, 2010;
- Organizational charts prepared around March 2009, July 2009 and September 2009.
- All non-privileged documents from the data room used for the August 2009 secondary offering;
- Correspondence exchanged with the SEC, including subpoenas, document production cover letters, privilege and redaction logs, and Wells submission;
- Transcripts of the SEC testimony of Manouch Moshayedi, Mark Moshayedi, Mike Nilsson, Doug Finke, Anthony Anvari, Bill Fahey and David Mittelman;
- All documents provided by STEC to the Financial Industry Regulatory Authority in response to inquiries regarding STEC's financial results for the third and fourth quarters of 2009 and revenue guidance for the fourth quarter of 2009; and
- Invoices demonstrating that EMC purchased \$120 million of ZeusIOPS during the second half of 2009.

See Ex. N.

Contrary to Lead Plaintiff's assertion (*supra* at 2), the comprehensive production of documents STEC has already made to Lead Plaintiff—which includes documents STEC also produced to the SEC—contains myriad documents directly responsive to Lead Plaintiff's discovery requests. Indeed, STEC's production to date includes *all* non-privileged emails sent or received by virtually

1 *all* of STEC's senior executive officers during the relevant time periods without
2 limitation as to subject matter.

3 On December 14, 2011, counsel for Lead Plaintiff and STEC met and
4 conferred by telephone for approximately two hours regarding all fifty of Lead
5 Plaintiff's Requests in the Second Set of Requests for Production. During this
6 discussion, STEC's counsel identified the numerous categories of documents
7 STEC already had produced and discussed additional searches STEC was in the
8 process of conducting or would consider conducting in response to Lead Plaintiff's
9 Second Set of Requests for Production.

10 On December 20, Lead Plaintiff sent STEC a letter purporting to summarize
11 the parties' December 14, 2011 meet and confer discussion. Ex. L. Later that
12 same day, as a result of STEC's diligent and good faith efforts, Lead Plaintiff
13 received a production of documents in response to its Second Set of Requests for
14 Production. Before even reviewing the documents STEC produced, also on the
15 same day (December 20, 2011), Lead Plaintiff fired off a second letter to STEC
16 threatening to file a motion to compel further production of documents. Ex. M.
17 On December 22, STEC responded to Lead Plaintiff's December 20 letters,
18 explaining that Lead Plaintiff's letters inaccurately summarized the parties'
19 December 15, 2011 meet and confer discussions, making specific proposals
20 regarding production of additional documents, explaining that STEC presently was
21 engaged in collecting certain additional documents, and stating that because the
22 meet and confer process was still ongoing any motion to compel would be
23 premature. Ex. N. The letter concluded by proposing that the parties meet and
24 confer again on January 4, 5 or 6, 2012. *Id.* at 7. On December 27, Lead Plaintiff
25 responded in a brief letter, stating that Lead Plaintiff would not respond to STEC's
26 December 22 meet and confer proposals until after the mediation session scheduled
27 for January 5, 2012. Ex. W.

28 STEC received no further communication from Lead Plaintiff regarding

1 discovery until January 10, 2012, when Lead Plaintiff's counsel, rather than even
2 attempt to discuss the outstanding discovery issues, surprised STEC's counsel with
3 a draft Joint Stipulation of Discovery Dispute and Motion to Compel requesting
4 the Court's intervention. Ex. X. In response, on the following day, STEC's
5 counsel sent a letter explaining again that it would be premature for Lead Plaintiff
6 to file a motion to compel given that the meet and confer process had not yet been
7 exhausted and proposing that the parties meet and confer on January 12, 13, or 17,
8 2012. Ex. Y. Lead Plaintiff's counsel has continued to reject STEC's efforts to
9 further meet and confer. See Ex. Z; Ex. AA.

10 Lead Plaintiff's outright refusal to engage in further meet and confer
11 discussions with STEC's counsel regarding this Request is in direct violation of
12 Federal Rule of Civil Procedure 37(a) and Local Rule 37 and will result in
13 unnecessary intervention by, and burden upon, the Court. See, e.g., *Doe v. Los*
14 *Angeles W. Travelodge*, No. 08-CV-8279-CBM-CTX, 2009 WL 5470092, at *1
15 (C.D. Cal. May 6, 2009) ("Only if the litigants cannot resolve their dispute should
16 they bring a motion before the court by means of a focused joint stipulation
17 pursuant to Local Rule 37-2."); *Torres v. County of Orange*, No. 02-CV-223-AHS
18 (ANx), 2003 U.S. Dist. LEXIS 27979, at *4 (C.D. Cal. Nov. 12, 2003) (denying
19 motion to compel because the plaintiff failed to establish that he made a
20 "sufficient, good-faith pre-filing effort to eliminate a need for the Motion" as
21 required under Local Rule 37-1); see also *Khoa Hoang v. Trident Seafoods Corp.*,
22 C06-1158 RSL, 2007 WL 2138779, at *2 (W.D. Wash. July 23, 2007) (stating that
23 the plaintiff failed to comply with the spirit of the rules by filing motions to compel
24 before exhausting the meet and confer process, which "wasted the Court's and
25 defendants' time"). Tellingly, even "Lead Plaintiff's Contentions" below fail to
26 comply with Local Rule 37, which requires that each party state in its contentions
27 "how it proposed to resolve the dispute over that issue at the conference of
28 counsel." L.R. 37-2.1. Lead Plaintiff's contentions contain no such discussion

1 because Lead Plaintiff refuses to participate in a conference with STEC.

2 **STEC's Proposal for Resolution of the Disputed Requests**

3 In a good faith effort to resolve the "disputed" discovery requests Lead
4 Plaintiff identifies, on January 12, 2012, STEC proposed to produce the following
5 additional documents:

- 6 • In response to Request Numbers 21 & 22: All emails held by
7 custodians Steve Cox (Regional Sales Manager – OEM Division),
8 Hani Yousef (VP of Sales), Yoda Yasunobu (VP of Japan Sales),
9 Tommy Vogtman (Asia/Pacific Account Executive), and Lorenzo
10 Salhi (VP of Sales) regarding purchases or sales of ZeusIOPS sent to,
11 or received from, IBM, Sun, HP, and Hitachi, during the period April
12 1, 2009 – September 30, 2009.
- 13 • In response to Request Number 26: (1) Self-collected non-email
14 responsive documents held by custodians Mike Higa and Grace Lee;
15 and (2) emails held by custodians Mike Higa and Grace Lee regarding
16 revenue reported by STEC for the third quarter of 2009 that were
17 created, sent, or received by Mike Higa or Grace Lee during the
18 period July 1, 2009 – October 31, 2009.
- 19 • In response to Request Number 36: STEC is presently collecting
20 certain responsive documents, including reports relating to the
21 composition of STEC's cost of revenues during the third and fourth
22 quarters of 2009, which it will produce as soon as possible, but in any
23 case not later than January 31, 2012.
- 24 • In response to Request Number 49: All emails held by custodian
25 Lorenzo Salhi regarding purchases or sales of ZeusIOPS sent to, or
26 received from HP or Cisco during the period April 1, 2009 –
27 September 30, 2009.

28 Ex. AA. On January 16, 2012, Lead Plaintiff responded that STEC's proposals
were "unacceptable." Ex. BB.

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ISSUES AND PARTIES' CONTENTIONS

I. REQUEST FOR PRODUCTION NO. 21⁵

Lead Plaintiff's Request:

To the extent not produced in response to another request herein, all documents relating to any communication regarding ZeusIOPS with (a) EMC, (b) IBM, (c) Sun, (d) HP and/or (e) Hitachi.

Defendant's Response:

Defendant specifically objects to this Request insofar as it is vague, ambiguous, overly broad, and unduly burdensome, seeks documents that are irrelevant to the subject matter at issue in this case, and is outside the scope of permissible inquiry. Defendant further specifically objects to this Request on the ground that it purports to call for the production of privileged information, including, without limitation, information that constitutes attorney work product, or information that is protected by the attorney-client privilege or any other applicable privilege, rule of privacy or confidentiality, immunity, protection, or restriction that makes such information otherwise non-discoverable. Defendant specifically objects to the extent this Request seeks trade secrets or other sensitive and proprietary information. In addition, Defendant specifically objects to this Request on the ground that it is duplicative, unduly burdensome and harassing, as it seeks information previously requested in Plaintiff's First Set of Requests for

⁵ Lead Plaintiff's Second Request inadvertently overlooked the local rule requiring that individual document requests be numbered consecutively without repeating numbers in previous requests for production. Therefore, the individual requests in the Second Request are numbered from 1 to 50, despite the First Request already having included requests numbered 1 to 3. For simplicity, all the correspondence between the parties regarding the Second Request identifies specific requests by the numbers as stated in the Second Request, *except* Lead Plaintiff's December 12, 2011, letter, *see* Ex. K, which added three to each number, to account for the three individual requests in Lead Plaintiff's First Request.

1 Production of Documents. Defendant already has produced all non-privileged
2 responsive documents reflecting correspondence with Manouch Moshayedi, Mark
3 Moshayedi, Raymond Cook, Anthony Anvari, Bill Fahey, Luis Morales, Sammy
4 Yau, Farzin Bazshushtari, E.T. Ong, and Mitch Gellman.

5 **A. Lead Plaintiff's Contentions**

6 “Litigants may obtain discovery regarding any matter, not privileged, that is
7 relevant to the claim or defense of any party” and “[d]istrict courts have broad
8 discretion in determining relevancy for discovery purposes.” *Survivor Media, Inc.*
9 *v. Survivor Productions*, 406 F.3d 62, 635 (9th Cir. 2005). Moreover, Rule 26(b)
10 is “liberally interpreted to permit wide-ranging discovery of all information
11 reasonably calculated to **lead to** discovery of admissible evidence.” *U.S. E.E.O.C.*
12 *v. Ian Schrager Hotels, Inc.*, CV 99-0987GAFCRX, 2000 WL 307470, at *3 (C.D.
13 Cal. Mar. 8, 2000) (emphasis added).

14 The Complaint alleges that during the 2009 third quarter, Defendants made
15 misleading statements regarding the EMC Agreement and expected sales to the
16 Other OEMs, who include IBM, Sun, HP and Hitachi, to increase. *See* Ex. O, at
17 ¶¶ 3,9, 110-11. Defendants’ statements and omissions regarding the EMC
18 Agreement allegedly misled investors regarding, among other things, whether
19 EMC would be making similar purchases after the end of the term of the EMC
20 Agreement. *Id.* at ¶¶ 8-69. Therefore, Defendants’ knowledge of, among other
21 things, intended future purchases by each and all of these OEMs, and other facts
22 regarding the OEMs’ current business that would impact future purchases, is
23 relevant to, among other things, both falsity and scienter regarding Defendants’
24 alleged misstatements. Moreover, Defendants’ communications with each of these
25 OEM customers obviously are relevant to whether Defendants had any such
26 knowledge when they made their alleged misstatements.⁶

27 _____
28 ⁶ Such communications prior to the misstatements obviously are relevant. Such

Following the meet and confer, in response to STEC's objections to this request, Lead Plaintiff sent STEC a letter narrowing its request as follows:

Request **No. 21** asks for all communications regarding ZeusIOPS with EMC, IBM, Sun, HP and/or Hitachi. **Request No. 22** asks for all communications with EMC, IBM, Sun, HP and/or Hitachi without limitation as to subject matter, but limited to the period comprised by the 2009 second and third quarters. In its written response to both of these requests, STEC stated that it already had produced all such communications of certain STEC employees who it then named. During the "meet and confer," I pointed out that, while the list of employees referenced in STEC's response did include the sales representatives responsible for sales to EMC and IBM, it did not include the STEC employees responsible for sales to Sun, HP and Hitachi. Therefore, Lead Plaintiff requests that, in response to each of these two requests, STEC produce all non-privileged responsive documents created, sent or received by Steve Cox and Hani Yousef (re sales to Sun), Yoda Yasunobu and Tommy Vogtman (re sales to Hitachi), and Lorenzo Salhi (re sales to HP).

Ex. L; *compare, e.g.*, Ex. P (organization chart showing Salhi was the VP of sales for HP, Steve Cox was the director of sales in Northern California, where Sun is located, and Mike Yousef was the VP of sales to whom Cox reported); Ex. Q. (statement in SEC deposition that Yoda Yasunobu is STEC's V.P. of sales in Japan); *with* Ex. R (statement by Anvari that he is the V.P. of sales for EMC and IBM).

STEC responded to Lead Plaintiff's offer as follows:

Requests Nos. 21 & 22. You request that STEC produce all non-privileged, responsive documents consisting of "all communications regarding ZeusIOPS with EMC, IBM, Sun, HP, and/or Hitachi" and "all communications with EMC, IBM, Sun, HP and/or Hitachi . . . during the period comprised by the second and third quarters" "created, sent, or received" by sales employees Steve

communications for a certain length of time after the misstatements also are relevant because they may lead to the discovery of, or clarify the meaning of, communications made before the misstatements.

1 Cox, Hani Yousef, Yoda Yasunobu, Tommy Vogtman, and Lorenzo
2 Salhi. STEC already has produced documents responsive to these
3 Requests pertaining to EMC communications. Your request for “all”
4 correspondence with the other OEMs is unduly burdensome and will
5 require collection and review of a large number of documents and
6 emails. Nevertheless, STEC will consider production of a subset of
these employees emails either by self-collection or through use of
negotiated search terms pertaining to particular subject matters.

7 Ex. N.

8 STEC’s insistence that it will only produce a negotiated “subset” of the
9 requested documents is not acceptable and cannot be justified. STEC asserts that it
10 has produced “documents responsive to these requests” regarding EMC, and gives
11 no reason why, given the allegations herein regarding the Other OEMs,
12 communications with the Other OEMs should be treated any differently.

13 Moreover STEC’s assertion that it would be “burdensome” to produce the
14 communications between the five relevant STEC sales persons and the OEM
15 customer of each such person, as limited in Request No. 21 by subject—to
16 communications involving the ZeusIOPS—or as limited in Request No. 22 by
17 time—to just the six months of the 2009 second and third quarters—is shown to be
18 meritless by STEC’s admission that, in its production to the SEC, STEC produced
19 **all** communications of **seven** different STEC employees (including Anvari, the
20 V.P. of sales to EMC and IBM), without **any** limitation as to the other party in the
21 communication, without **any** limitation as to subject matter, and from a period
22 covering **seventeen months**. Ex. N, at 2, at first bullet point. By comparison,
23 Lead Plaintiff’s request, as narrowed by its letter, quoted, *supra*, is modest, as well
24 as legally justified.

25 **B. Defendant’s Contentions**

26 Lead Plaintiff seeks “all communications” regarding ZeusIOPS with STEC’s
27 original equipment manufacturer customers EMC, IBM, Sun, HP, and Hitachi (the
28 “OEMs”) during the period January 1, 2009 to June 30, 2010. This Request is

1 exceptionally broad and, if complied with, would require STEC to collect and
2 review a staggering amount of email correspondence between more than 800
3 STEC employees and these five customers. As stated in STEC's Responses and
4 Objections to Lead Plaintiff's Second Request and in its meet and confer
5 correspondence with Lead Plaintiff, compliance with this Request would be unduly
6 burdensome. Ex. J at 19, Ex. N at 4-5.⁷

7 Through the meet and confer process, STEC confirmed that responsive
8 documents pertaining to ZeusIOPS sales to EMC already had been collected and
9 produced to Lead Plaintiff. See Ex. N (describing by category the voluminous
10 documents already produced). Lead Plaintiff accordingly narrowed Request
11 Number 21 to seek only non-privileged responsive documents created, sent or
12 received by STEC employees responsible for ZeusIOPS sales to the other OEMs,
13 namely Steve Cox, Hani Yousef, Yoda Yasunobu, Tommy Vogtman, and Lorenzo
14 Salhi. Ex. L at 4. STEC responded to Lead Plaintiff's proposal by stating that
15 Lead Plaintiff's request still would require collection and review of a large number
16 of documents—*i.e.*, all email correspondence with the OEMs sent or received by
17

18 ⁷ Lead Plaintiff contends that STEC's assertion of undue burden in response
19 to several of the disputed requests is "meritless" because STEC and the STEC
20 Defendants produced a large volume of documents and emails to the Securities and
21 Exchange Commission ("SEC") in response to SEC subpoenas, whereas Lead
22 Plaintiff's Request is "modest." Lead Plaintiff's assertion ignores the distinction
23 between discovery under the Federal Rules of Civil Procedure and production of
24 documents in response to an SEC subpoena. In a federal civil action, parties may
25 obtain discovery regarding any non-privileged matter that is relevant to any party's
26 claim or defense. See Fed. R. Civ. P. 26(b)(1). Such discovery, however, is
27 subject to limitations. The responding party, for example, may object to the
28 production of electronically stored information on the grounds that it is "not
reasonably accessible because of undue burden or cost." Fed. R. Civ. P.
26(b)(2)(B). No such limitations apply with respect to an SEC voluntary request
or subpoena, however. See SEC Manual § 3.2.6.2 (requiring the subpoenaed entity
or individual to provide all the materials described in the subpoena).

1 five custodians during an eighteen-month period. Nevertheless, STEC stated that it
2 would “consider production of a subset of these employees’ emails either by self-
3 collection or through use of negotiated search terms pertaining to particular subject
4 matters.” Ex. N at 5. Stated differently, STEC communicated to Lead Plaintiff
5 that it was willing to discuss means by which responsive email correspondence
6 could be collected and produced without requiring STEC to incur the undue burden
7 of collecting and reviewing *all* of these employees’ emails with the OEMs within
8 the specified time period. STEC’s counsel expressed willingness to discuss this
9 counter-proposal by telephone on January 4, 5, or 6, 2012. *Id.* at 7.

10 In response, Lead Plaintiff refused to engage in any further meet and confer
11 discussions with STEC’s counsel regarding this Request, in direct violation of
12 Federal Rule of Civil Procedure 37(a) and Local Rule 37. Lead Plaintiff’s
13 improper refusal to participate in the meet and confer process notwithstanding, on
14 January 12, 2012, STEC’s counsel sent a letter to Lead Plaintiff stating that STEC
15 is willing to produce the following in response to Request Number 21:

- 16 • All emails held by custodians Steve Cox, Hani Yousef, Yoda
17 Yasunobu, Tommy Vogtman, and Lorenzo Salhi regarding purchases
18 or sales of ZeusIOPS sent to, or received from, IBM, Sun, HP, and
19 Hitachi, during the period April 1, 2009 – September 30, 2009.

20 Ex. AA at 1. Lead Plaintiff’s response to this proposal is simply that it is
21 “unacceptable.” Ex. BB. Lead Plaintiff insists upon production of (1) “[a]ll
22 communications by Steve Cox and/or Hani Yousef with Sun regarding ZeusIOPS”
23 between January 1, 2009 and June 30, 2012; (2) “[a]ll communications by Yoda
24 Yasunobu and/or Tommy Vogtman with Hitachi regarding ZeusIOPS” between
25 January 1, 2009 and June 30, 2010; and (3) “[a]ll communications by Lorenzo
26 Salhi with HP regarding ZeusIOPS” between January 1, 2009 and June 30, 2010.
27 Ex. BB; *see also* Ex. I at _ (specifying date range of January 1, 2009 to June 30,
28 2010). Moreover, Lead Plaintiff has now dramatically expanded its request to seek

1 production of “all communications *involving*” the specified custodians, rather than
2 production of correspondence sent by or to each custodian. Ex. BB at 2.

3 STEC’s proposal narrows Lead Plaintiff’s request by (1) limiting the
4 production to correspondence regarding purchases or sales of ZeusIOPS; (2)
5 narrowing Lead Plaintiff’s eighteen-month time period to a six-month time period
6 from April 1, 2009 to September 30, 2009 (*i.e.*, the second and third quarters of
7 2009). Lead Plaintiff fails to explain why correspondence for an eighteen-month
8 time period (ten months longer than the class period) having anything whatsoever
9 to do with ZeusIOPS (including technical specifications, testing, etc.) are relevant
10 to this action and justify the tremendous burden of collecting, reviewing, and
11 processing for production this volume of electronic documents and
12 communications. Lead Plaintiff also fails to explain why STEC’s proposal is
13 “unacceptable.” STEC remains willing to produce the documents specified above
14 as soon as reasonably possible.

15 **II. REQUEST FOR PRODUCTION NO. 22**

16 **Lead Plaintiff’s Request:**

17 All documents drafted, modified, sent or received during STEC’s second or
18 third quarter of 2009, relating to any communication with (a) EMC, (b) IBM, (c)
19 Sun, (d) HP and/or (e) Hitachi.

20 **Defendant’s Response:**

21 Defendant specifically objects to this Request on the ground that the
22 Request fails to identify the documents sought with reasonable particularity.
23 Defendant further specifically objects to this Request insofar as it is vague,
24 ambiguous, overly broad, and unduly burdensome, seeks documents that are
25 irrelevant to the subject matter at issue in this case, and is outside the scope of
26 permissible inquiry. Defendant further specifically objects to this Request on the
27 ground that it purports to call for the production of privileged information,
28 including, without limitation, information that constitutes attorney work product,

1 or information that is protected by the attorney-client privilege or any other
2 applicable privilege, rule of privacy or confidentiality, immunity, protection, or
3 restriction that makes such information otherwise non-discoverable. In addition,
4 Defendant specifically objects to the extent this Request seeks trade secrets or
5 other sensitive and proprietary information. Defendant already has produced all
6 non-privileged responsive documents reflecting correspondence with Manouch
7 Moshayedi, Mark Moshayedi, Raymond Cook, Anthony Anvari, Bill Fahey, Luis
8 Morales, Sammy Yau, Farzin Bazshushtari, E.T. Ong and Mitch Gellman.

9 **A. Lead Plaintiff's Contentions**

10 Lead Plaintiff's contentions regarding Request No. 22 are essentially the
11 same as its contentions, *supra*, regarding Request No. 21. STEC should be
12 compelled to produce documents responsive to this request as narrowed by Lead
13 Plaintiff's letter following the meet and confer. *See* Ex. L.

14 **B. Defendant's Contentions**

15 Lead Plaintiff's contentions with respect to its Request Number 22 are the
16 same as with respect to Request Number 21, above. STEC's contentions regarding
17 Request Number 22 are likewise the same as its contentions regarding Request
18 Number 21. Regarding Request Number 22, as with Request Number 21, STEC
19 proposes to produce the following:

- 20 • All emails held by custodians Steve Cox, Hani Yousef, Yoda
21 Yasunobu, Tommy Vogtman, and Lorenzo Salhi regarding purchases
22 or sales of ZeusIOPS sent to, or received from, IBM, Sun, HP, and
23 Hitachi, during the period April 1, 2009 – September 30, 2009.

24 Ex. AA at 1. As discussed above, Lead Plaintiff's response to this proposal is
25 simply that it is "unacceptable." Ex. BB. Lead Plaintiff insists upon production of
26 (1) "[a]ll communications by Steve Cox and/or Hani Yousef with Sun without
27 limitation as to subject matter, but limited to the period comprised by the 2009
28 second and third quarters"; (2) "[a]ll communications by Yoda Yasunobu and/or

Tommy Vogtman with Hitachi without limitation as to subject matter, but limited to the period comprised by the 2009 second and third quarters”; and (3) “[a]ll communications by Lorenzo Salhi with HP without limitation as to subject matter, but limited to the period comprised by the 2009 second and third quarters.” Ex. BB.

STEC’s proposal narrows Lead Plaintiff’s request only by limiting the subject-matter of its production to correspondence “regarding purchases or sales of ZeusIOPS,” rather than any subject matter. Lead Plaintiff fails to explain why all communications sent by or to the specified custodians without any limitation whatsoever as to the subject matter of those communications is in any way relevant to this action to justify the tremendous burden of collecting, reviewing, and processing for production this volume of electronic documents and communications. Lead Plaintiff also fails to explain why STEC’s proposal is “unacceptable.” STEC remains willing to produce the documents specified above as soon as reasonably possible.

III. REQUEST FOR PRODUCTION NO. 23

Lead Plaintiff’s Request:

All documents relating to any sale of any product or service by STEC during STEC’s 2009 second quarter, including, without limitation, every purchase order, side agreement or shipping document relating to any such sale.

Defendant’s Response:

Defendant specifically objects to this Request on the ground that the Request fails to identify the documents sought with reasonable particularity. Defendant further specifically objects to this Request insofar as it is vague, ambiguous, overly broad, and unduly burdensome, seeks documents that are irrelevant to the subject matter at issue in this case, and is outside the scope of permissible inquiry. Defendant further specifically objects to this Request on the ground that it purports to call for the production of privileged information,

1 including, without limitation, information that constitutes attorney work product,
2 or information that is protected by the attorney-client privilege or any other
3 applicable privilege, rule of privacy or confidentiality, immunity, protection, or
4 restriction that makes such information otherwise non-discoverable. In addition,
5 Defendant specifically objects to the extent this Request seeks trade secrets or
6 other sensitive and proprietary information.

7 **A. Lead Plaintiff's Contentions**

8 The Complaint alleges that Defendants inflated STEC's 2009 second quarter
9 reported revenue, *see* Ex. O, at 3, by, among other things, shipping defective or
10 unordered product so that unearned income could be reported, and by undisclosed
11 channel stuffing, ¶¶ 190-98. Highly relevant to this claim are all documents
12 concerning, among other things, what products were shipped by STEC during the
13 2009 second quarter, whether the shipments matched prior purchase orders,
14 whether the shipments arrived at their destination during the second quarter,
15 whether payment was received during the second quarter, whether the revenue
16 recorded by STEC matched the amount billed, and whether the shipment later was
17 returned because, among other reasons, unordered or defective.

18 Following the meet and confer, in response to STEC's objections to this
19 request, Lead Plaintiff's letter to STEC narrowed the request as follows:

20 **Request No. 23** asks for all documents relating to any sale by STEC
21 during STEC's 2009 second quarter. You requested that we narrow
22 this request. Therefore, without waiving its rights to obtain at another
23 time a complete response to this request, Lead Plaintiff requests that,
24 for present purposes, STEC produce all documents regarding any
25 sales made by STEC during the 2009 second quarter that were
26 provided by STEC to its outside auditor for its 2009 year end audit of
27 STEC, plus all documents regarding sales by STEC during its 2009
28 second quarter, that were created, sent or received by Brandon Lucero
(who, according to Mark Moshayedi, distributed a daily sales report),
any other person besides Brandon Lucero who distributed similar
reports (Mark Moshayedi testified that, at different times, different
STEC employees distributed such reports), Mike Higa (senior vice

1 president of finance) and Grace Lee (director of financial reporting).
2 Ex. L; *see* Ex. S (Mark Moshayedi's testimony regarding Lucero); Ex. P
3 (organization chart showing the job titles of Mike Higa and Grace Lee).

4 STEC responded to Lead Plaintiff's offer as follows:

5 Requests Nos. 23, 24, 25, 40 & 41. Each of these Requests seeks
6 documents regarding sales, revenues and/or shipments during the
7 second quarter of 2009, as these Requests are not reasonably
8 calculated to lead to the discovery of admissible evidence. STEC
9 accordingly will not produce additional documents responsive to
10 these requests beyond the voluminous documents that already have
been produced in response to Plaintiff's First Set of Requests for
Production.

11 Ex. N.

12 STEC's response is utterly baseless and unacceptable. Contrary to STEC's
13 assertion, even as originally phrased, this request is "calculated to lead to the
14 discovery of admissible evidence."

15 Moreover, as rephrased in Lead Plaintiff's letter, quoted, *supra*, the request
16 is finely particularized and substantially tailored to reduce any burden on STEC to
17 a minimum. STEC is likely to have, or can obtain from its auditor, an actual copy
18 of the relevant information regarding the 2009 second quarter sales provided to its
19 auditor. Still further, STEC is likely to have a work paper request list that it
20 received from its auditor, from which, if necessary, the information provided to
21 STEC's auditor easily could be reassembled.

22 In addition, for the reasons explained, *supra*, regarding the STEC employees
23 relevant to Request No. 21, a request for the relevant communications of Lucero,
24 Higa and Lee is not unduly burdensome.

25 Finally, STEC's reference to "voluminous documents that already have been
26 produced in response to Plaintiff's First Set of Requests for Production" is
27 misleading. There is no evidence that the SEC investigation is concerned with
28 whether 2009 second quarter revenue was accurately reported. Based on the SEC

1 subpoenas and depositions, any concern of the SEC regarding STEC's 2009
2 second quarter reported revenue has been limited to whether, prior to that revenue
3 being reported, Defendants tipped friends or relatives regarding the content of the
4 impending report.

5 Thus, the SEC subpoenas ask for documents regarding STEC's
6 "announcement" of its quarterly results, Ex. T, or regarding drafts of the 10-Q that
7 reported those results, Ex. U, but no request is made for information confirming or
8 contradicting the truth of the results reported. Nor does STEC even assert that all
9 responsive documents to Request No. 23, as narrowed by Lead Plaintiff's letter,
10 quoted, *supra*, have been produced. In short, the production of even "voluminous"
11 **non-responsive** documents cannot excuse STEC's failure to produce all
12 documents that are **responsive** to a request that, like this one, is precisely tailored
13 to one of the Complaint's fundamental claims.

14 **B. Defendant's Contentions**

15 STEC contends that Lead Plaintiff's request is overly broad, unduly
16 burdensome and seeks documents regarding issues that are not relevant to this
17 action. See Ex. J at 21. Remarkably, this request seeks "all documents" relating to
18 "*any* sale of *any* product or service" during the second quarter of 2009. Lead
19 Plaintiff's proposed "narrowing" of this request demands production of all
20 documents regarding any sales during the second quarter of 2009 that were
21 provided by STEC to its outside auditor, as well as documents regarding second
22 quarter sales sent or received by three custodians. Ex. L at 4. This proposal hardly
23 reduces the significant burden on STEC of collecting, reviewing, and producing
24 this voluminous number of documents.

25 **1. Lead Plaintiff's Request Is Not Relevant to this Action and**
26 **Will Not Lead to Admissible Evidence**

27 Lead Plaintiff's request for a large number of documents relating to second
28 quarter sales is particularly objectionable because these documents are not relevant

1 to the key issues and allegations in this case. In the Second Consolidated
2 Amended Complaint (“SAC” or “Complaint”), Lead Plaintiff alleges only that
3 STEC sent customers unwanted and defective product (SAC ¶¶ 192-93), and that
4 STEC pressured customers to advance into the first quarter purchases that would
5 not be needed until a later quarter (SAC ¶¶ 196-98). Yet Lead Plaintiff does not
6 allege that STEC improperly recognized revenue based on this purported conduct.
7 Indeed, Lead Plaintiff admits in the Complaint that STEC properly recognized that
8 any product returns would reduce its revenue. SAC ¶ 194. Lead Plaintiff likewise
9 does not allege that the market learned of this purported improper revenue
10 recognition such that misstatements in revenue could have caused loss to investors.
11 Lead Plaintiff identifies nothing—no specific facts or documents—to support this
12 theory other than the statements of 2 Confidential Witnesses. And as this Court
13 previously held, Lead Plaintiff cannot rely on Confidential Witnesses to assert
14 accounting improprieties when they are “not alleged to have personal knowledge
15 of the effects that the conduct they witnessed had on reported revenues.” Order
16 Granting Defendants’ Motion to Dismiss Plaintiff’s Consolidated Amended
17 Complaint (“January 10, 2011 Order”) (Dkt No. 175) at 10. Because the entirety
18 of Lead Plaintiff’s assertion that STEC shipped defective and unwanted products is
19 based upon the statements of Confidential Witnesses who are not alleged to have
20 personal knowledge regarding how this purported conduct bears upon STEC
21 revenues accounting, any requests by Lead Plaintiff for accounting documents or
22 sales and shipping records to support this utterly unfounded—and previously
23 rejected—theory are not reasonably calculated to lead to admissible evidence and
24 should be rejected.

25 Lead Plaintiff’s request for documents related to any sale, shipment, or
26 revenue in the second quarter of 2009—despite the absence of any viable
27 allegations to support Lead Plaintiff’s assertion that STEC improperly recorded
28 revenue in the second quarter of 2009—is unjustified. Lead Plaintiff’s request

1 appears designed to enable Lead Plaintiff to double-check the work of STEC's
2 independent auditor in an attempt to find additional claims against STEC. Such
3 discovery tactics are impermissible. Lead Plaintiff's request reflects "a largely
4 groundless claim to simply take up the time of a number of other people, with the
5 right to do so representing an *in terrorem* increment of the settlement value, rather
6 than a reasonably founded hope that the [discovery] process will reveal relevant
7 evidence." *Dura Pharms., Inc. v. Broudo*, 544 U.S. 336, 347 (2005) (quoting *Blue*
8 *Chip Stamps v. Manor Drug Stores*, 421 U.S. 723, 741 (1975)). Lead Plaintiff's
9 request to compel production of additional documents responsive to this request
10 should be rejected.

11 **2. Lead Plaintiff's Request Is Overbroad and Unduly**
12 **Burdensome**

13 Even assuming *arguendo* that some portion of Lead Plaintiff's request could
14 relate to properly pleaded allegations, the request remains dramatically overbroad
15 and unduly burdensome. Lead Plaintiff does not limit its request to the customers
16 that allegedly received defective products, to the non-EMC customers that
17 allegedly account for the increase in second quarter 2009 revenue guidance, or
18 even to the ZeusIOPS drives that fueled the rise and fall of STEC's stock price.
19 Instead, Lead Plaintiff insists that STEC produce what amounts to nearly every
20 marketing, sales, accounting, and client relations documents from a period in
21 which STEC achieved \$86.4 million in revenues—a massive number of documents
22 and significant amount of electronic data. The documents Lead Plaintiff requests
23 are unrelated even to the broadest construction of its allegations in this action.
24 Lead Plaintiff's burdensome request for countless documents unrelated to the
25 claims the Court found to be adequately alleged, violate the spirit of the PSLRA
26 and "bring about the harm of the very sort the statutes seek to avoid." *Dura*
27 *Pharms.*, 544 U.S. at 347.

28 Furthermore, STEC already has produced a substantial number of

documents responsive to this Request in response to Lead Plaintiff's First Sets of Requests for Production of Documents by Defendants STEC, Manouch Moshayedi, Mark Moshayedi and Raymond D. Cook ("First Requests"), including daily sales and profit reports as well as shipping reports for IBM and EMC. Lead Plaintiff's contention that the documents STEC produced to the SEC pertain to other topics is incorrect. In fact, STEC's productions to the SEC—which STEC also produced to Lead Plaintiff in this action—including *all* emails sent and received by key STEC executives Manouch Moshayedi, Mark Moshayedi, Raymond Cook, Mitch Gellman, Anthony Anvari, Bill Fahey, Luis Morales, and others during the relevant time periods. Moreover, some additional responsive documents may be included with the productions STEC proposes in response to Request Numbers 21, 22 and 49. Lead Plaintiff contends that the production made thus far is "unacceptable" and offers no explanation why STEC should incur the burden and expense of producing voluminous additional, irrelevant documents.

IV. REQUEST FOR PRODUCTION NO. 24

Lead Plaintiff's Request:

To the extent not produced in response to another request herein, all documents relating to any shipment delivered by STEC to any customer during STEC's 2009 second quarter.

Defendant's Response:

Defendant specifically objects to this Request on the ground that the Request fails to identify the documents sought with reasonable particularity. Defendant further specifically objects to this Request insofar as it is vague, ambiguous, overly broad, and unduly burdensome, seeks documents that are irrelevant to the subject matter at issue in this case, and is outside the scope of permissible inquiry. Defendant further specifically objects to this Request on the ground that it purports to call for the production of privileged information, including, without limitation, information that constitutes attorney work product,

1 or information that is protected by the attorney-client privilege or any other
2 applicable privilege, rule of privacy or confidentiality, immunity, protection, or
3 restriction that makes such information otherwise non-discoverable. In addition,
4 Defendant specifically objects to the extent this Request seeks trade secrets or
5 other sensitive and proprietary information. Defendant further objects to this
6 Request on the ground that it is duplicative, unduly burdensome and harassing, as
7 it seeks information previously requested in Plaintiff's First Set of Requests for
8 Production of Documents.

9 **A. Lead Plaintiff's Contentions**

10 Lead Plaintiff's contentions regarding Request No. 24 are essentially the
11 same as its contentions, stated, *supra*, regarding Request No. 23, except that Lead
12 Plaintiff's offer to narrow the request is slightly different. Thus, Lead Plaintiff's
13 letter to STEC stated the following:

14 Request **No. 24** asks for all documents relating to any shipment
15 delivered by STEC during the 2009 second quarter. You requested
16 that we narrow this request. Therefore, without waiving its rights to
17 obtain at another time a complete response to this request, Lead
18 Plaintiff requests that, for present purposes, STEC produce all
19 documents regarding any shipments made by STEC during the 2009
20 second quarter that were provided by STEC to its outside auditor for
21 its 2009 year end audit of STEC, plus all documents regarding
22 shipments by STEC during its 2009 second quarter, that were created,
23 sent or received by Shane Mortazavi (vice president of operations),
Brandon Lucero, or any other STEC employee who during the 2009
second quarter distributed reports—whether titled “sales and profits”
or bearing some other title—similar to the reports distributed by
Brandon Lucero.

24 Ex. L; Ex. P (showing Shane Mortazavi's job title).

25 **B. Defendant's Contentions**

26 Lead Plaintiff's contentions with respect to its Request Number 24 are the
27 same as with respect to Request Number 23, above. STEC's contentions regarding
28 the irrelevance and unduly burdensome nature of Request Number 24 are likewise

1 the same as its contentions regarding Request Number 23.

2 In any event, STEC has produced a substantial number of documents
3 responsive to this Request in response to Lead Plaintiff's First Set of Requests for
4 Production, including shipping reports for IBM and EMC. Lead Plaintiff's
5 contention that the documents STEC produced to the SEC pertain to other topics is
6 incorrect. In fact, STEC productions to the SEC—which STEC also produced to
7 Lead Plaintiff in this action—including *all* emails sent and received by key STEC
8 executives Manouch Moshayedi, Mark Moshayedi, Raymond Cook, Mitch
9 Gellman, Anthony Anvari, Bill Fahey, Luis Morales, and others during the relevant
10 time periods. Moreover, some additional responsive documents may be included
11 with the productions STEC proposes above in response to Request Numbers 21, 22
12 and 49. Lead Plaintiff contends that the production made thus far is
13 “unacceptable” and offers no explanation why STEC should incur the burden and
14 expense of producing voluminous additional, irrelevant documents.

15 **V. REQUEST FOR PRODUCTION NO. 25**

16 **Lead Plaintiff's Request:**

17 All documents relating to any revenue reported by STEC for its 2009 second
18 quarter.

19 **Defendant's Response:**

20 Defendant specifically objects to this Request on the ground that the
21 Request fails to identify the documents sought with reasonable particularity.
22 Defendant further specifically objects to this Request insofar as it is vague,
23 ambiguous, overly broad, and unduly burdensome, seeks documents that are
24 irrelevant to the subject matter at issue in this case, and is outside the scope of
25 permissible inquiry. Defendant further specifically objects to this Request on the
26 ground that it purports to call for the production of privileged information,
27 including, without limitation, information that constitutes attorney work product,
28 or information that is protected by the attorney-client privilege or any other

1 applicable privilege, rule of privacy or confidentiality, immunity, protection, or
2 restriction that makes such information otherwise non-discoverable. In addition,
3 Defendant specifically objects to the extent this Request seeks trade secrets or
4 other sensitive and proprietary information.

5 Subject to and without waiver of the foregoing objections, Defendant
6 already has produced non-privileged documents within its possession, custody, or
7 control responsive to this Request in response to Plaintiff's First Set of Requests
8 for Production of Documents. To the extent other responsive documents exist,
9 Defendant objects to their production on the grounds set forth above.

10 **A. Lead Plaintiff's Contentions**

11 Lead Plaintiff's contentions regarding Request No. 25 are essentially the
12 same as its contentions, stated, *supra*, regarding Requests No. 23 and 24, except
13 that Lead Plaintiff's offer to narrow this request is slightly different. Thus, Lead
14 Plaintiff's letter to STEC stated the following:

15 Request **No. 25** asks for all documents relating to any revenue
16 reported by STEC for its 2009 second quarter. You requested that we
17 narrow this request. Therefore, without waiving its rights to obtain at
18 another time a complete response to this request, Lead Plaintiff
19 requests that, for present purposes, STEC produce all documents
20 regarding any revenue reported by STEC for its 2009 second quarter,
21 that were provided by STEC to its outside auditor for its 2009 year
22 end audit of STEC, plus all documents regarding any revenue
23 reported by STEC for its 2009 second quarter, that were created, sent
24 or received by Mike Higa (senior vice president of finance) or Grace
25 Lee (director of financial reporting).

26 Ex. L.

27 **B. Defendant's Contentions**

28 Lead Plaintiff's contentions with respect to its Request Number 25 are the
same as with respect to Request Number 23, above. STEC's contentions regarding
the irrelevance and unduly burdensome nature of Request Number 25 are likewise
the same as its contentions regarding Request Number 23.

1 In any event, STEC has produced a substantial number of documents
2 responsive to this Request in response to Lead Plaintiff's First Set of Requests for
3 Production, including monthly consolidated financial statements as well as drafts
4 and email exchanges regarding STEC's 2009 second quarter earnings release.
5 Lead Plaintiff's contention that these documents, which STEC also produced to the
6 SEC, pertain to other topics not relevant to this action is incorrect. In fact, STEC's
7 productions to the SEC—which STEC also produced to Lead Plaintiff in this
8 action—including *all* emails sent and received by key STEC executives Manouch
9 Moshayedi, Mark Moshayedi, Raymond Cook, Mitch Gellman, Anthony Anvari,
10 Bill Fahey, Luis Morales, and others during the relevant time periods. Moreover,
11 some additional responsive documents may be included with the productions
12 STEC proposes above in response to Request Numbers 21, 22 and 49. Lead
13 Plaintiff contends that the production made thus far is "unacceptable" and offers no
14 explanation why STEC should incur the burden and expense of producing
15 voluminous additional, irrelevant documents.

16 **VI. REQUEST FOR PRODUCTION NO. 26**

17 **Lead Plaintiff's Request:**

18 All documents relating to any revenue reported by STEC for its 2009 third
19 quarter.

20 **Defendant's Response:**

21 Defendant specifically objects to this Request on the ground that the
22 Request fails to identify the documents sought with reasonable particularity.
23 Defendant further specifically objects to this Request insofar as it is vague,
24 ambiguous, overly broad, and unduly burdensome, seeks documents that are
25 irrelevant to the subject matter at issue in this case, and is outside the scope of
26 permissible inquiry. Defendant further specifically objects to this Request on the
27 ground that it purports to call for the production of privileged information,
28 including, without limitation, information that constitutes attorney work product,

1 or information that is protected by the attorney-client privilege or any other
2 applicable privilege, rule of privacy or confidentiality, immunity, protection, or
3 restriction that makes such information otherwise non-discoverable. In addition,
4 Defendant specifically objects to the extent this Request seeks trade secrets or
5 other sensitive and proprietary information.

6 Subject to and without waiver of the foregoing objections, Defendant
7 already has produced non-privileged documents within its possession, custody, or
8 control responsive to this Request in response to Plaintiff's First Set of Requests
9 for Production of Documents. To the extent other responsive documents exist,
10 Defendant objects to their production on the grounds set forth above.

11 **A. Lead Plaintiff's Contentions**

12 Lead Plaintiff's contentions regarding Request No. 26 are essentially the
13 same as its contentions, stated, *supra*, regarding Requests No. 23, 24 and 25,
14 except that Lead Plaintiff's offer to narrow this request is slightly different. Thus,
15 Lead Plaintiff's letter to STEC stated the following:

16 Request **No. 26** asks for all documents relating to any revenue
17 reported by STEC for its 2009 third quarter. You requested that we
18 narrow this request. Therefore, without waiving its rights to obtain at
19 another time a complete response to this request, Lead Plaintiff
20 requests that, for present purposes, STEC produce all documents
21 regarding any revenue reported by STEC for its 2009 third quarter,
22 that were provided by STEC to its outside auditor for its 2009 year
end audit of STEC, plus all documents regarding any revenue
reported by STEC for its 2009 third quarter, that were created, sent or
received by Mike Higa or Grace Lee.

23 Ex. L.

24 STEC's response to Lead Plaintiff's offer to narrow Request No. 26 differs
25 from STEC's response to Lead Plaintiff's offers to narrow Requests No. 23, 24 and
26 25, only in that, in response to Lead Plaintiff's offer to narrow Request No. 26,
27 STEC says that it will "meet and confer further with Plaintiff regarding a
28 production of certain documents responsive to this Request and a narrowed subject

1 matter.” Ex. N.

2 STEC’s response is nothing but an “evasive” disclosure that qualifies as “a
3 failure to disclose,” under Rule 37(a)(4). A production of “certain” responsive
4 documents is not sufficient, and the request already has been narrowed
5 substantially beyond what the discovery rules and the relevant authorities require.

6 **B. Defendant’s Contentions**

7 Lead Plaintiff seeks “all documents” from January 1, 2009 through June 30,
8 2010 relating to any revenue reported by STEC for its 2009 third quarter. Since
9 virtually all of STEC’s activities are related to earning revenues, this Request is
10 exceptionally broad and, if complied with, would require STEC to collect and
11 review a staggering number of emails from over 800 STEC employees during an
12 18-month period. As stated in STEC’s Responses and Objections to Lead
13 Plaintiff’s Second Request, compliance with this Request would be unduly
14 burdensome. Ex. J at 23.

15 Apparently recognizing that its Request was overbroad, Lead Plaintiff
16 agreed to narrow it by seeking “all documents regarding any revenue reported by
17 STEC for its 2009 third quarter, that were provided by STEC to its outside auditor
18 for its 2009 year end audit of STEC, plus all documents regarding any revenue
19 reported by STEC for its 2009 third quarter, that were created, sent or received by
20 Mike Higa or Grace Lee.” Ex. L at 5. STEC responded to Lead Plaintiff’s
21 proposal by stating that it remained overbroad and unduly burdensome—*i.e.*, all
22 email correspondence for Mike Higa and Grace Lee during an eighteen-month
23 period and all email correspondence between STEC employees and its outside
24 auditor during an eighteen-month period. Nevertheless, STEC stated that it would
25 undertake “additional good faith investigation for documents responsive to this
26 Request and [would] meet and confer further with [Lead] Plaintiff regarding a
27 production of certain documents responsive to this Request and a narrowed subject
28 matter.” Ex. N at 5. Stated differently, STEC communicated to Lead Plaintiff that

1 it was willing to discuss means by which responsive email correspondence could
2 be collected and produced without requiring STEC to incur the undue burden of
3 collecting and reviewing *all* of Mike Higa's and Grace Lee's emails within the
4 requested time period. STEC's counsel expressed willingness to discuss this
5 counter-proposal by telephone on January 4, 5, or 6, 2012. *Id.* at 7.

6 In response, Lead Plaintiff refused to engage in any further meet and confer
7 discussions with STEC's counsel regarding this Request, in direct violation of
8 Federal Rule of Civil Procedure 37(a) and Local Rule 37. Lead Plaintiff's
9 improper refusal to participate in the meet and confer process notwithstanding, on
10 January 12, 2012, STEC's counsel sent a letter to Lead Plaintiff's counsel
11 explaining that STEC already has produced the vast majority of documents
12 responsive to this Request in response to Lead Plaintiff's First Set of Requests for
13 Production, including monthly consolidated financial statements as well as drafts
14 and email exchanges regarding the earnings release for STEC's 2009 third quarter.
15 Ex. AA at 2. The letter further explained that STEC is willing to produce the
16 following in response to Request Number 26:

- 17 • Self-collected non-email responsive documents held by custodians
- 18 Mike Higa and Grace Lee; and
- 19 • All emails held by custodians Mike Higa and Grace Lee regarding
- 20 revenue reported by STEC for the third quarter of 2009 that were
- 21 created, sent, or received by Mike Higa or Grace Lee during the
- 22 period July 1, 2009 – October 31, 2009.

23 Lead Plaintiff has responded only that the proposed production in response
24 to Request Number 26 is "unacceptable" with no further explanation. Ex. BB.

25 **VII. REQUEST FOR PRODUCTION NO. 36**

26 **Lead Plaintiff's Request:**

27 All documents relating to STEC's cost of revenues during the third and/or
28 fourth quarters of 2009, including, without limitation, all documents relating to the

composition of STEC's cost of revenues during the third and/or fourth quarters of 2009.

Defendant's Response:

Defendant specifically objects to this Request on the ground that the Request fails to identify the documents sought with reasonable particularity. Defendant further specifically objects to this Request insofar as it is vague, ambiguous, overly broad, and unduly burdensome, seeks documents that are irrelevant to the subject matter at issue in this case, and is outside the scope of permissible inquiry. Defendant further specifically objects to this Request on the ground that it purports to call for the production of privileged information, including, without limitation, information that constitutes attorney work product, or information that is protected by the attorney-client privilege or any other applicable privilege, rule of privacy or confidentiality, immunity, protection, or restriction that makes such information otherwise non-discoverable. Defendant specifically objects to the extent this Request seeks trade secrets or other sensitive and proprietary information.

Subject to and without waiver of the foregoing objections, Defendant already has produced non-privileged documents within its possession, custody, or control responsive to this Request in response to Plaintiff's First Set of Requests for Production of Documents. To the extent other responsive documents exist, Defendant objects to their production on the grounds set forth above.

A. Lead Plaintiff's Contentions

The Complaint alleges that Defendants' scienter for their alleged misstatements regarding expected sales to the Other OEMs during the second half of 2009 can be deduced from information showing that, prior to the second half of 2009, STEC ordered inventory approximately equal to STEC's cost of revenues in the 2009 second half. Ex. O, at ¶¶ 124-38.

In their motion to dismiss the Complaint, Defendants attempted to raise a

fact issue regarding these allegations on the ground that, according to Defendants, STEC's cost of revenues is substantially comprised of other things besides cost of revenues. *See* Ex. T.

Therefore, documents concerning the composition of STEC's cost of revenues are highly relevant to Lead Plaintiff's claim regarding the Other OEMs.

In Lead Plaintiff's letter to STEC, Lead Plaintiff offered to narrow this request as follows:

Request No. 36 asks for all documents relating to STEC's cost of revenues during the third and/or fourth quarters of 2009, including all documents relating to the composition of STEC's cost of revenues during the third and/or fourth quarters of 2009. STEC's written response merely objected to this request. I pointed out that, during the briefing on Defendants' motion to dismiss the Second Amended Complaint, the parties disputed the composition of STEC's cost of revenues during these quarters. I also stated that, for present purposes, Lead Plaintiff was willing to limit this request to all documents created, used or received by STEC's finance/accounting department that reference, analyze, demonstrate or evidence STEC's cost of revenues during the third and/or fourth quarters of 2009, and/or the composition of STEC's cost of revenues during the third and/or fourth quarters of 2009. You stated that you would inquire whether STEC would be willing to produce all such documents.

Ex. L.

STEC responded as follows:

Request No. 36. In your letter, and as discussed in our meet and confer conference, you state that Lead Plaintiff will limit this Request to "all documents created, used or received by STEC's finance/accounting department that reference, analyze, demonstrate or evidence STEC's cost of revenues" during the third and fourth quarters of 2009. As I stated during our call, this Request remains significantly broad and unduly burdensome. It also calls for the production of documents not relevant to the allegations of the complaint. If Lead Plaintiff narrows this request to specific subjects and explains why this information is relevant, STEC will consider an appropriately tailored production of responsive documents.

Ex. N.

Given that, during the briefing on Defendants' motion to dismiss the Complaint, Defendants raised the issue to which this request responds, STEC's request in its letter for an explanation as to why the documents requested are "relevant" is disingenuous, and nothing more than an attempt to delay production.

Moreover, Lead Plaintiff already has offered to narrow this request substantially, and STEC has not made any counter suggestion. Therefore, STEC should be compelled to produce documents responsive to the request as narrowed in Lead Plaintiff's letter.

B. Defendant's Contentions

Lead Plaintiff seeks "all documents" relating to STEC's cost of revenues during the third and fourth quarters of 2009. This Request is exceptionally broad and, if complied with, would require STEC to collect and review a staggering number of emails from over 800 STEC employees during an eighteen-month period. As stated in STEC's Responses and Objections to Lead Plaintiff's Second Request, compliance with this Request would be unduly burdensome. Ex. J at 31.

Documents responsive to this request also are irrelevant to this action and their production unlikely to lead to admissible evidence. *See id.* at 6. Lead Plaintiff asserts that STEC's inventory levels during the second half of 2009 show that STEC did not expect increased sales of ZeusIOPS by other OEMs. SAC ¶¶ 124-38. In support of this argument, Lead Plaintiff incorrectly contends that "cost of revenues" equals the "inventory actually used in a given quarter." *Id.* Yet as explained in the STEC Defendants' Motion to Dismiss the Second Amended Consolidated Complaint, STEC's public filings make clear that its "cost of revenues" consists of other components and does not simply represent the "inventory actually used in a given quarter." Dkt No. 184 at 19. Additional documents confirming this fact would add nothing to Lead Plaintiff's case. Moreover, even if the "cost of revenues" equaled all the "inventory actually used

1 in a given quarter,” this information would not provide any insight into how much
2 ZeusIOPS inventory STEC had on hand.

3 Apparently recognizing that its request was overbroad, Lead Plaintiff agreed
4 to narrow this request by seeking “all documents created, used or received by
5 STEC’s finance/accounting department that reference, analyze, demonstrate or
6 evidence STEC’s cost of revenues during the third and/or fourth quarter of 2009,
7 and/or the composition of STEC’s cost of revenues during the third and/or fourth
8 quarter of 2009.” Ex. L at 6. STEC responded to Lead Plaintiff’s proposal by
9 stating that it remained significantly broad and unduly burdensome—i.e., all email
10 correspondence for nearly fifty individuals in STEC’s finance/accounting
11 department during an eighteen-month period. Ex. N at 6. STEC’s counsel
12 expressed willingness to discuss this counter-proposal by telephone on January 4,
13 5, or 6, 2012. *Id.* at 7.

14 In response, Lead Plaintiff refused to engage in any further meet and confer
15 discussions with STEC’s counsel regarding this Request, in direct violation of
16 Federal Rule of Civil Procedure 37(a) and Local Rule 37. Lead Plaintiff’s
17 improper refusal to participate in the meet and confer process notwithstanding, on
18 January 12, 2012, STEC’s counsel sent a letter to Lead Plaintiff’s counsel stating
19 that STEC is presently collecting certain responsive documents, including reports
20 relating to the composition of STEC’s cost of revenues during the third and fourth
21 quarters of 2009, which it will produce as soon as possible, but in any case not
22 later than January 31, 2012. Ex. AA at 2. On January 16, Lead Plaintiff responded
23 only that the proposed production in response to Request Number 36 is
24 “unacceptable” with no further explanation. Ex. BB.

25 **VIII. REQUEST FOR PRODUCTION NO. 40**

26 **Lead Plaintiff’s Request:**

27 All documents relating to any discount given to any STEC customer, in
28 return for such customer advancing into the 2009 second quarter purchases that

1 such customer had planned to make in a later quarter.

2 **Defendant's Response:**

3 Defendant specifically objects to this Request on the ground that the
4 Request fails to identify the documents sought with reasonable particularity.
5 Defendant further specifically objects to this Request insofar as it is vague,
6 ambiguous, overly broad, and unduly burdensome, seeks documents that are
7 irrelevant to the subject matter at issue in this case, and is outside the scope of
8 permissible inquiry. Defendant further specifically objects to this Request on the
9 ground that it purports to call for the production of privileged information,
10 including, without limitation, information that constitutes attorney work product,
11 or information that is protected by the attorney-client privilege or any other
12 applicable privilege, rule of privacy or confidentiality, immunity, protection, or
13 restriction that makes such information otherwise non-discoverable. Defendant
14 specifically objects to the extent this Request seeks trade secrets or other sensitive
15 and proprietary information.

16 Subject to and without waiver of the foregoing objections, Defendant
17 already has produced non-privileged, responsive documents within its possession,
18 custody, or control responsive to this Request in response to Plaintiff's First Set of
19 Requests for Production of Documents. To the extent other responsive documents
20 exist, Defendant objects to their production on the grounds set forth above.

21 **A. Lead Plaintiff's Contentions**

22 This request asks for documents relevant to the allegation in the Complaint
23 regarding channel stuffing. Ex. O, ¶¶ 190-98.

24 In Lead Plaintiff's letter to STEC, Lead Plaintiff offered to narrow this
25 request as follows:

26 **Request No. 40** asks for all documents relating to any discount given
27 to any STEC customer in return for such customer advancing into the
28 2009 second quarter purchases that such customer would have made,
if at all, at a later time. **Request No. 41** asks for all documents

1 relating to any request that a STEC customer make a purchase in the
2 2009 second quarter that such customer would have made, if at all, at
3 a later date. STEC's written response to each of these requests stated
4 that some, but not necessarily all, responsive documents had
5 previously been produced. Based on STEC's written responses to
6 request nos. 21 and 22, I assume any such documents previously
7 produced relate only to EMC or IBM. Therefore, Lead Plaintiff
8 requests that STEC now produce all non-privileged documents
9 responsive to each of these requests that were created, sent or
10 received by the STEC employees in charge of sales to Sun, HP,
11 Hitachi or Cisco, including Steve Cox, Hani Yousef, Yoda Yasunobu,
12 Tommy Vogtman and/or Lorenzo Salhi. You stated that you would
13 ask STEC whether all such documents would be produced.

14 Ex. L.

15 STEC responded to this offer in the same way that it responded to Lead
16 Plaintiff's offer to narrow Request Nos. 23 24, and 25:

17 Requests Nos. 23, 24, 25, 40 & 41. Each of these Requests seeks
18 documents regarding sales, revenues and/or shipments during the
19 second quarter of 2009, as these Requests are not reasonably
20 calculated to lead to the discovery of admissible evidence. STEC
21 accordingly will not produce additional documents responsive to
22 these requests beyond the voluminous documents that already have
23 been produced in response to Plaintiff's First Set of Requests for
24 Production.

25 Lead Plaintiff's contentions in regard to Request No. 41 are essentially the
26 same as its contentions, stated, *supra*, regarding Requests 23, 24, 25 and 26.

27 **B. Defendant's Contentions**

28 Lead Plaintiff's contentions with respect to its Request Number 40 are the
same as with respect to Request Number 23, above. STEC's contentions regarding
the irrelevance and unduly burdensome nature of Request Number 40 are likewise
the same as its contentions regarding Request Number 23. Subject to these
objections and STEC's objections as stated in its Responses and Objections to
Lead Plaintiff's Second Set of Requests for Production, STEC has no responsive
documents.

IX. REQUEST FOR PRODUCTION NO. 41

Lead Plaintiff's Request:

All documents relating to any request that a STEC customer make a purchase in the 2009 second quarter that such customer had planned to make, or, otherwise would have made, in a later quarter.

Defendant's Response:

Defendant specifically objects to this Request on the ground that the Request fails to identify the documents sought with reasonable particularity. Defendant further specifically objects to this Request insofar as it is vague, ambiguous, overly broad, and unduly burdensome, seeks documents that are irrelevant to the subject matter at issue in this case, and is outside the scope of permissible inquiry. Defendant further specifically objects to this Request on the ground that it purports to call for the production of privileged information, including, without limitation, information that constitutes attorney work product, or information that is protected by the attorney-client privilege or any other applicable privilege, rule of privacy or confidentiality, immunity, protection, or restriction that makes such information otherwise non-discoverable. Defendant specifically objects to the extent this Request seeks trade secrets or other sensitive and proprietary information.

Subject to and without waiver of the foregoing objections, Defendant already has produced non-privileged documents within its possession, custody, or control responsive to this Request in response to Plaintiff's First Set of Requests for Production of Documents. To the extent other responsive documents exist, Defendant objects to their production on the grounds set forth above.

A. Lead Plaintiff's Contentions

Lead Plaintiff's contentions regarding Request No. 41 are essentially the same as its contentions regarding Request No. 40.

B. Defendant's Contentions

Lead Plaintiff's contentions with respect to its Request Number 41 are the same as with respect to Request Number 23, above. STEC's contentions regarding the irrelevance and unduly burdensome nature of Request Number 41 are likewise the same as its contentions regarding Request Number 23. Subject to these objections and STEC's objections as stated in its Responses and Objections to Lead Plaintiff's Second Set of Requests for Production, STEC has no responsive documents.

X. REQUEST FOR PRODUCTION NO. 49

Lead Plaintiff's Request:

All documents created, modified or used during the second or third quarters of 2009, relating to any communication between Lorenzo Salhi and HP or Cisco.

Defendant's Response:

Defendant specifically objects to this Request on the ground that the Request fails to identify the documents sought with reasonable particularity. Defendant specifically objects to this Request insofar as it is vague, ambiguous, overly broad, and unduly burdensome, seeks documents that are irrelevant to the subject matter at issue in this case, and is outside the scope of permissible inquiry. Defendant further specifically objects to this Request on the ground that it purports to call for the production of privileged information, including, without limitation, information that constitutes attorney work product, or information that is protected by the attorney-client privilege or any other applicable privilege, rule of privacy or confidentiality, immunity, protection, or restriction that makes such information otherwise non-discoverable.

A. Lead Plaintiff's Contentions

As part of Lead Plaintiff's claim that Defendants inflated STEC's 2009 second quarter reported revenue, the Complaint specifically alleges that, Lorenzo Salhi, STEC's V.P. of sales for Cisco and HP, *see* Ex. P, was involved in shipping

1 defective products to, and channel stuffing with, HP and Cisco, and that other
2 similar incidents took place involving his customers and Defendant Manouch
3 Moshayedi. Ex. O, at ¶¶ 190-93, 195-98. Therefore, documents concerning
4 Salhi's communications with HP and Cisco during the 2009 second quarter are
5 highly relevant to Lead Plaintiff's claim concerning STEC's allegedly inflated
6 2009 second quarter reported revenue.⁸

7 Lead Plaintiff's letter to STEC following the meet and confer stated the
8 following:

9 Request **No. 49** asks for all communications during the 2009 second
10 or third quarters between Lorenzo Salhi (vice president of sales) and
11 HP or Cisco. STEC's written response simply objects to this request.
12 I pointed out that Lead Plaintiff insists on receiving a complete
13 response to this request. The request is very specific and easy to
14 satisfy. Moreover, Salhi's communications with HP and Cisco
15 specifically have been put at issue by the Complaint. You
16 acknowledged my statement and did not assert the existence of any
17 reason that, even in your own mind, could justify a failure by STEC
18 to produce all non-privileged documents responsive to this request.

16 Ex. L.

17 STEC's letter responded as follows:

18 Request No. 49. As an initial matter, you incorrectly state that during
19 our meet and confer conference, I "did not assert the existence of any
20 reason that, even in your own mind, could justify a failure by STEC
21 to produce all non-privileged documents responsive to this request."
22 In fact, during our call, I simply noted your Request and indicated I
23 would have to discuss this Request internally. I did not state or
24 suggest that there is no justification for refusal to produce these
25 documents. To the contrary, this request is overly broad and unduly
26 burdensome. Moreover, this Request calls for the production of a

25 ⁸ Such communications during the 2009 third quarter are relevant because of,
26 among other things, what they may show regarding returns of defective products,
27 a drop in purchases resulting from the customers having advanced their purchases
28 into the second quarter, or simply because such communications may help to
identify or clarify relevant communications during the second quarter.

1 substantial number of documents, regarding facts that are not relevant
2 to the allegations of the complaint. If Lead Plaintiff narrows this
3 request to specific subjects and explains why this information is
4 relevant, STEC will consider an appropriately tailored production of
responsive documents.

5 Ex. N.

6 STEC's response is nothing but an evasive delaying tactic. Contrary to the
7 assertions in STEC's letter, the requested documents clearly are relevant, and the
8 request is not burdensome—for the same reasons as stated, *supra*, in Lead
9 Plaintiff's contentions regarding Request No. 21.

10 **B. Defendant's Contentions**

11 Lead Plaintiff seeks all documents created, modified, or used during the
12 second and third quarters of 2009 relating to "any communications between
13 Lorenzo Salhi and HP or Cisco." This Request is excessively broad and, if
14 complied with, would require STEC to collect and review a large number of emails
15 between Salhi and these two customers during the six month period April 1, 2009
16 to September 30, 2009. As stated in STEC's Responses and Objections to Lead
17 Plaintiff's Second Request and in its meet and confer correspondence with Lead
18 Plaintiff, compliance with this Request would be unduly burdensome. Ex. J at 40,
19 Ex. N at 6.

20 Moreover, these documents are not relevant to this action. Lead Plaintiff
21 contends that Salhi's communications with HP and Cisco are relevant to its claim
22 that STEC engaged in shipment of defective products and channel stuffing in the
23 second quarter of 2009. To the contrary, as discussed above, Lead Plaintiff's
24 allegations regarding inflated second quarter 2009 revenue are meritless and are
25 not relevant to the claims in this action. *See supra* at 21-23.

26 Nevertheless, in its December 22, 2011 letter STEC stated that "if [Lead]
27 Plaintiff narrows this request to specific subjects and explains why this information
28 is relevant, STEC will consider an appropriately tailored production of responsive

documents.” Ex. N. at 6. Lead Plaintiff did not respond to this proposal. In a further effort to meet and confer, on January 12, 2012, STEC’s counsel sent a letter to Lead Plaintiff stating that STEC is willing to produce the following in response to Request Number 49:

- All emails held by custodian Lorenzo Salhi regarding purchases or sales of ZeusIOPS sent to, or received from HP or Cisco during the period April 1, 2009 – September 30, 2009.

Ex. AA at 2. Lead Plaintiff has responded only that the proposed production in response to Request Number 49 is “unacceptable” with no further explanation. Ex. BB.

LIM, RUGER & KIM, LLP

1 **IT IS SO STIPULATED.**

2
3 DATED: January 18, 2012

4 LATHAM & WATKINS LLP

5 By: /s/ Colleen C. Smith
6 Colleen C. Smith
7 Attorneys for Defendant

8 DATED: January 10, 2012

9 LABATON SUCHAROW LLP

10 By: /s/ Richard T. Joffe
11 Thomas A. Dubbs
12 James W. Johnson
13 Richard T. Joffe
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